

the plaintiff wrote \$120 over other figures. In my view, although the entry appeared untidy, it was legible and showed the correct amount, and the plaintiff complied with the requirements of section 7(1).

The second criticism made by the District Judge was that this amount of \$120 was credited to interest instead of principal. In my opinion, this criticism was not justified. The agreed rate of interest was 48% per annum. The amount of the principal was \$700. The interest payable per mensem was therefore \$28. A sum of \$28 was paid as interest on the 2nd April, 1958; and another sum of \$28 was paid as interest on the 3rd May, 1958. Ten months' interest was in arrear on the 2nd March, 1959. This amounted to \$280. The plaintiff was fully entitled to treat the sum of \$120 paid by the defendant on the 2nd March, 1959, as a payment to interest.

The third criticism was that a sum of \$100 which was paid by the defendant to the plaintiff on the 8th November, 1959, was credited to interest instead of principal. I had to consider whether that criticism was justified. On that date the plaintiff was entitled under the terms of the promissory note to interest at the rate of \$28 per month for 20 months, i.e. \$560, less the interest already paid, which was \$176. The arrears of interest on that date thus amounted to \$384. He was, therefore, entitled to credit the sum of \$100 to interest. The uncontradicted evidence of the plaintiff was that he ceased to carry on business as a moneylender from the 11th September, 1959, when the old Moneylenders Ordinance was repealed by the Moneylenders Ordinance, 1959. In my opinion, the mere collection of outstanding debts after the coming into operation of the Moneylenders Ordinance, 1959, on the 11th September, 1959, did not make him a moneylender within the meaning of the term as defined in the new Ordinance. That being so, the interest which he could recover was limited to 20% per annum under section 23 of the new Ordinance. But, in my opinion, this sub-section did not impose on him any obligation to credit the sum of \$100 which was paid to him on the 8th November, 1959, to principal or to re-write his account of the loan to show the amount he was entitled to recover under section 23(5).

Furthermore, on the 8th November, 1959, the plaintiff was not subject to the obligations of section 7 of the old Ordinance, as it had been repealed on the 11th September, 1959. Neither was he subject to the obligations of section 19 of the new Ordinance which corresponds to section 7 of the old Ordinance, as in my view he was not a moneylender within the meaning of the term as defined in the new Ordinance. The

A District Judge had, therefore, no power to dismiss the plaintiff's claim either under section 7(2) of the old Ordinance or under section 19(5) of the new Ordinance.

B It was for the above reasons that I allowed the plaintiff's appeal, set aside the judgment of the District Court and gave judgment in favour of the plaintiff for the amount claimed and costs of the appeal.

Appeal allowed.

Solicitors: *Murugason & Co.*

C **LEE WAH BANK LTD. v. THE COMMISSIONER OF FEDERAL CAPITAL OF KUALA LUMPUR**

[A.C.J. (Ong J.) September 29, 1961]

[K.L. — Originating Motion No. 15 of 1961]

D *Local Authority — Rating — Assessment of "Annual Value" — Town Board Enactment (F.M.S. Cap. 137), ss.2, 25 and 44 — Premises in course of construction — "Vacant or unoccupied or only partially built upon" — Meaning of "occupation" — Observations on English decisions on rateable occupation.*

E The applicant appealed under section 44 of the Town Board Enactment against the decision of the Commissioner that a certain holding of the Bank is liable to assessment based on an annual value of \$49,000 with effect from January 1961, the result being reached by the exercise of an option of fixing the annual value at one-tenth of the improved value of the holding in accordance with the second proviso to the definition of "annual value" in section 2 of the said Enactment. It was argued for the Bank that the Commissioner had no power to exercise the option because the holding at the relevant time contained over its entire area a building in the course of construction, and that it therefore cannot be correctly described as "vacant or unoccupied or partially built upon" and as such the Commissioner had no ground for exercising the option as he purported to have done. It was argued for the Commissioner that rates are imposed on all holding by section 25 of the said Enactment and that a holding as such, is rateable, and not by reason of a building being situate thereon.

G Held: as the holding was not vacant or unoccupied or only partially built upon it was not open to the Commissioner to exercise the option as he had purported to do. The alternative assessment was also not available because the holding was bringing in no rent.

H *Per Curiam*: "It is quite true that in this country rates are levied on owners and not on occupiers as in England. English decisions on rateable occupation are therefore not of much assistance so that the question now before the Court must be decided without the benefit of guidance of any precedent."

Cases referred to:—

- I (1) *London County Council v. Wilkins* [1957] A.C. 362; [1956] 3 W.L.R. 505, 509.
(2) *Newcastle City Council v. Royal Newcastle Hospital* [1959] 1 All E.R. 734; [1959] 2 W.L.R. 476, 479.

ORIGINATING MOTION.

L. P. Thean for the applicant/appellant.
D. G. Rawson for the respondent.

Cur. Adv. Vult.

Ong J.: This is an appeal under section 44 of the Town Boards Enactment by the Lee Wah Bank Ltd. against the decision of the Commissioner of the Federal Capital of Kuala Lumpur given on May 26, 1961 that a certain holding of the bank is liable to assessment based on an annual value of \$49,000 with effect from January 1961. This assessment was the result of exercising an option of fixing the annual value at one-tenth of the improved value of the holding in accordance with the provisions of the second proviso to the definition of "annual value" contained in section 2 of the Town Boards Enactment (F.M.S. Cap. 137).

There is no dispute as to the facts. The Lee Wah Bank Ltd. is the owner of Lots 6, 7 and 8, section 14, in the Town of Kuala Lumpur, situate at Old Market Square and containing an area of 6,376.10 square feet. Upon this holding the new premises of the bank were in course of construction when the 1961 Assessment List came into force, and the building has not yet been completed when this appeal came on for hearing. On November 9, 1960 the bank received from the then Kuala Lumpur Municipal Council a notice under section 39 of the Town Boards Enactment that the annual value of its holding had been assessed at \$54,000. The bank lodged an objection under section 40 of the Enactment on November 28, 1960, and a further objection on December 3, 1960. Those objections were duly heard by the Commissioner who reduced his assessment to the figure of \$49,000 based on the sum of \$490,000 as the improved value of the holding. Against such decision the bank has brought this appeal.

There were originally three grounds of appeal, but as a result of the abandonment of one of them, namely, that the holding was valued beyond its rateable value, there only remains for determination by this Court a single question: whether the Commissioner was entitled to exercise the option of assessing the annual value of the holding at one-tenth of its improved value by virtue of the provisions of the second proviso to the definition of "annual value" contained in section 2 of the Enactment.

For the present purpose the relevant portion of the definition that need be set out is as follows:

"'Annual value' means the estimated gross annual rent at which the holding might reasonably be expected to let from year to year . . ."

Then follows the first proviso, and, next after it, the second which reads:

"Provided also that in the case of any holding which is vacant or unoccupied or only partially built upon, the annual value shall at the option of the Board be deemed

A to be the annual value as hereinbefore defined or one-tenth of the improved value thereof."

The contention of Mr. Thean, counsel for the bank has the "perennial attraction of rugged simplicity," if I may respectfully borrow an expression used by Lord Kilmuir L.C. in *London County Council v. Wilkins* ⁽¹⁾. His argument is as follows: the holding at the relevant time contains over its entire area a building in course of construction; it cannot thus be correctly described as "vacant or unoccupied or partially built upon;" consequently, the Commissioner had no ground for exercising the option as he purported to have done.

The argument of Mr. Rawson, counsel for the Commissioner is that rates are imposed on all holdings by section 25 of the Town Boards Enactment; that a holding, as such, is rateable, and not by reason of a building being situate thereon; and that the Commissioner consequently was right in applying the provisions of the second proviso for assessment of the annual value. It is quite true that in this country rates are levied on owners and not on occupiers as in England. English decisions on rateable occupation are therefore not of much assistance, so that the question now before the Court must be decided without the benefit of guidance by any precedent.

It is clear that the holding in actual fact is neither vacant nor partially built upon, since a building nine stories high and covering its entire area is in course of construction. The only point, therefore, on which conflicting views arise, is as to the meaning of the word "unoccupied." Taking that word first in its ordinary meaning in the English language, I do not think that the holding can properly be said to be unoccupied while building contractors and their workmen were in continuous possession and occupation thereof since work on the foundation began. Secondly, in section 2 of the Enactment there appears this definition:

"'Occupier' means the person in occupation of the holding or building in respect of which the word is used, or having the charge, management, or control thereof either on his own account or as agent of another person, but does not include a lodger."

In my view this definition is sufficiently wide to cover builders and contractors who are on the holding, for the purpose of erecting a building thereon, whether they occupy on their own account or as agents of the owner of the holding. Thirdly, I would respectfully adopt what Lord Denning said in *Newcastle City Council v. Royal Newcastle Hospital* ⁽²⁾ that "occupation is matter of fact and only exists when there is sufficient measure of control to prevent strangers from interfering." In the instant case I think the building contractor can bring an action of

trespass against any stranger entering upon the premises or interfering with the building operations.

I therefore hold that, as the holding was not vacant or unoccupied or only partially built upon, it was not open to the Commissioner to exercise the option as he had purported to do. The alternative assessment was also not available because the holding was bringing in no rent. In the result I agree with the submission of counsel for the bank that the holding was not rateable. The appeal is allowed with costs, and I further order that the sum of \$8,820 deposited by the bank be refunded by the Commissioner.

Appeal allowed.

Solicitors: *Shook Lin & Bok; Shearn, & Delamore & Co.*

BAPTIST v. PUBLIC PROSECUTOR

[A. Cr. J. (Syed Sheh Barakbah J.) September 29, 1961]

[Alor Star — Criminal Appeal No. 28 of 1961]

Criminal Law and Procedure — Bribery and corruption — Prevention of Corruption Ordinance, 1950, s.3(b) — Monetary inducement to Fisheries Assistant to issue Belat Panjang licences — Whether he was accomplice whose evidence required corroboration.

Penal Code, ss.116 and 165 — Abetment.

Appellant was charged under section 3(b) of the Prevention of Corruption Ordinance, 1950 for corruptly giving a person in the employment of the Fisheries Department (namely a Fisheries Assistant) a sum of \$100 as an inducement for the issue of 2 belat panjang licences to his principal or alternatively for abetment under sections 116 and 165 of the Penal Code. The learned President found him guilty of both offences and convicted and sentenced him to 5 months' imprisonment. On appeal counsel for the appellant submitted (1) that as the Fisheries Assistant (North Kedah) had no jurisdiction to renew the licences, it could not be said that money was given to him as an inducement to do an act in relation to his principal's affairs, (2) that the said Fisheries Assistant was an accomplice whose evidence required corroboration.

Held: (1) by Kedah Government Gazette Notification No. 236 of 1957 the Fisheries Assistant was a Fishery Officer for the whole State of Kedah and a separation of the office into 2 divisions, viz. North Kedah on the one hand and Central and South Kedah on the other was merely a departmental arrangement to suit the public;

(2) on the facts of the case the Fisheries Assistant was not an accomplice whose evidence required corroboration.

Cases referred to:—

- (1) *Abdul Hamid v. Public Prosecutor* [1956] M.L.J. 231.
- (2) *Loh Kwang Seang v. Public Prosecutor* [1960] M.L.J. 271.
- (3) *Hiralal Badlo v. Rex* [1950] M.L.J. 96.
- (4) *Public Prosecutor v. Lim Yam* [1961] M.L.J. 29.
- (5) *Emperor v. Anwar Ali A.I.R.* 1948 Vol. 35 Lahore 27.
- (6) *Lian Teck Chew v. R.* [1955] M.L.J. 28.

A CRIMINAL APPEAL.

B. K. Das (Chang Min Tat with him) for the appellant.

Abdul Kadir bin Yusof (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Syed Sheh Barakbah J.: The appellant in this case was charged before the learned President of the Sessions Court as follows:—

1. That you on 31.5.60 at about 3.25 p.m. at Fisheries Office, Alor Star, in the State of Kedah, did corruptly give to an agent, namely, Arshad bin Haji Md. Isa, Fisheries Assistant, in the employment of Fisheries Department, Federation of Malaya a sum of \$100 as an inducement to do an act in relation to his principals' affairs to wit, to issue two Belat Panjang Licences to one Koad Chin Joo of Penang, and you have thereby committed an offence under section 3(b) of Prevention of Corruption Ordinance, 5/50.

Alternatively,

2. That you on 31.5.60 at 3.25 p.m., at Fisheries Office, Alor Star, in the State of Kedah, abetted the Commission by one Arshad bin Haji Md. Isa of an offence of obtaining valuable thing to wit cash \$100 without consideration, punishable with imprisonment which said offence was not committed in consequence of the abetment and you have thereby committed an offence under sections 116 and 165 Penal Code.

He was found guilty on the principal charge and convicted and sentenced to five months' imprisonment. He now appeals against the conviction and sentence.

The facts of the case have been fully set out by the learned President in his judgment but in view of the arguments raised by Mr. Das, counsel for the appellant, it is necessary that I should deal with them at some length.

PW1, Arshad bin Haji Md. Isa was a Fisheries Assistant, North Kedah. Before June 1959 there was only one Officer in charge of the Fisheries Department for the whole State of Kedah and since that date there were two, one stationed at Sungei Patani and the other at Alor Star. PW1 was the Officer stationed at Alor Star.

The appellant was a Statistic Clerk at the Office of the Fisheries Officer, North-West Malaya, Penang. He kept records of licences issued in the Penang office. According to PW4, Fishery Officer, stationed at Penang, since February 2, 1959 the renewal of *belat panjang* licences was approved by him (PW4). Appellant had no authority to renew licences. The duty of the Fisheries Assistant was to recommend renewal to PW4 and also to inspect the belats before renewal. The two licences Exhibit P-2 were in respect of *belat panjang* at Tanjong Dawai. This would be within the jurisdiction of the Fisheries Assistant at Sungei Patani. PW1 had nothing to do with this.

On May 11, 1960 at about 1.30 p.m. appellant approached PW1 and asked him to issue two *belat panjang* licences to one Koad Chin Joo. PW1 told appellant that he could not renew the licences unless with the approval of the Fisheries Officer, North-West, at Penang. Appellant then